

Internal Revenue Service

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Person To Contact:

Telephone Number:

Refer Reply To:

CC:PSI:B07

PLR-112548-06

Date:

September 12, 2006

LEGEND

Taxpayer:

Year 1:

Amount A:

Dear :

We received your letter requesting permission for Taxpayer to revoke an election under § 528 of the Internal Revenue Code for Year 1. This letter responds to your request.

The information submitted and the representations made are as follows: Taxpayer, a residential real estate management association, hired an accounting firm to prepare its federal income tax return for Year 1. Taxpayer, on its prior tax returns, had elected to file Form 1120-H under § 528. During Year 1, a portion of the common area owned by Taxpayer was sold for a net gain of Amount A. Thus, it would have been to Taxpayer's advantage to file Form 1120 for Year 1. Taxpayer relied upon the accounting firm in this matter. However, the accounting firm did not take advantage of the regular corporate tax structure in calculating the gain on the sale of the common area. A Form 1120-H was used in reporting the income for Year 1.

After discovering that filing its tax return on Form 1120-H was not to Taxpayer's advantage for Year 1, Taxpayer requested permission to revoke its § 528 election for Year 1 so that it could calculate its federal income tax as a corporation using Form 1120.

Section 528 provides that certain homeowners associations may elect to be treated as tax-exempt organizations, but only to the extent of their exempt function

income. Exempt function income consists solely of amounts received as membership dues, fees, or assessments from owners of residential units or residential lots.

Section 1.528-8(a) of the Income Tax Regulations provides that a separate election to be treated as a homeowners association under § 528 must be made for each taxable year. The election is made by filing a properly completed Form 1120-H.

Section 1.528-8(f)(1) provides that an election to be treated as a homeowners association is binding on the organization for the taxable year and may not be revoked without the consent of the Commissioner.

Rev. Rul. 82-203, 1982-2 C.B. 109, and Rev. Rul. 83-74, 1983-1 C.B. 112, set forth situations in which the consent of the Commissioner was requested to revoke an election under § 528. These revenue rulings provide that considerations or factors similar to those described in Rev. Proc. 79-63, 1979-2 C.B. 578 (factors that were taken into consideration by the Commissioner in determining whether an extension of time for making an election will be granted under the former regulation § 1.9100-1) were appropriate in determining whether taxpayers would be permitted to revoke previous elections made under § 528. Factors that are given consideration are now found in §§ 301.9100-1 through 301.9100-3 of the Procedure and Administration Regulations. When applied to a request for the revocation of a § 528 election, these considerations require that the taxpayer requesting permission to revoke its election must establish that (1) the taxpayer acted reasonably and in good faith, and (2) the granting of relief would not prejudice the interest of the government.

Rev. Rul. 82-203, 1982-C.B. 109, holds that a homeowners association will not be permitted to revoke elections made under § 528 in previous years to obtain the benefit of a net operating loss incurred in a subsequent tax year.

Based solely on the information submitted and the representations made, we conclude that the requirements of §§ 301.9100-1 through 301.9100-3 have been satisfied. Accordingly, permission to revoke the elections made under § 528 for Year 1 is granted provided that the revocation is not sought in order to obtain the benefit of a net operating loss incurred in a subsequent tax year. We note that § 277 will apply to Taxpayer if a § 528 election is not in effect. See Rev. Rul. 90-36, 1990-1 C.B. 59.

Taxpayer must file a properly completed Form 1120-X (amended U.S. Corporation Tax Return) for Year 1 within 90 days of the date of this ruling. A copy of this ruling should be attached to that tax return.

Upon the revocation of the election made under § 528, any amount received as membership dues, fees, or assessments that would qualify as exempt function income under § 528(d)(3) will not be treated as exempt, and such amount must be included in calculating taxable income for purposes of Form 1120 or Form 1120-X.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

/s/

Heather C. Maloy
Associate Chief Counsel (Passthroughs and
Special Industries)

cc: